

MASTER SERVICES AGREEMENT

This Master Services Agreement ("MSA") is among the CUSTOMER identified in the Participation Agreement and SUNTRUST MERCHANT SERVICES, LLC and/or its Affiliates (collectively, "PROVIDER") for the Services identified below.

This MSA is an exhibit to "Exhibit A - Record of Negotiations – Negotiated Changes to Proposal," Solicitation No. 5400007106. As such, it is part of the proposal titled "Merchant Bank Card Services," submitted in response to Solicitation No. 5400007106 by SunTrust Merchant Services, LLC, to the Materials Management Office, Procurement Services Division, South Carolina Budget and Control Board, and dated March 17, 2014. "Contract" means any contract the State of South Carolina awards pursuant to Solicitation No. 5400007106. "Participation Agreement" means the agreement executed by a public procurement unit permitted by law to participate in the Contract.

The intent of this MSA is to provide one set of standardized "Terms and Conditions" to be utilized for multiple relationships within the United States between a CUSTOMER and PROVIDER. All services provided by PROVIDER ("Services") will be identified as individual addenda to a Participation Agreement ("Addendum") with specific operational specifications and associated pricing. These Addenda will be subject to the Terms and Conditions of this MSA unless the applicable Addendum specifically states that additional and/or other terms and conditions apply.

In consideration of the mutual covenants and agreements set forth herein and other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, PROVIDER and CUSTOMER agree as follows:

1. Services. The Services available to a Customer are more fully described in the Contract and will be identified in an addendum to a Participation Agreement executed by a Customer and PROVIDER. PROVIDER shall have no obligation to provide Services unless and until a Customer and PROVIDER have executed a Participation Agreement in the form set forth in the Contract.

2. Term. This MSA and any Addenda attached hereto shall be in effect upon signing of each Participation Agreement by all parties and shall remain effective through the initial term provided for in the Contract. This MSA and any Addenda hereto shall automatically renew as provided for in the Contract. This MSA shall be effective until termination or expiration of the Contract.

3. Financial and Other Information. CUSTOMER shall prepare on an annual basis and make publicly available, its annual financial statements which shall be prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") as applicable to governments. Such financial statements shall be prepared in compliance with the standards established by the Government Accounting Standards Board ("GASB") for financial accounting and reporting for state and local government entities. Each Participant whose financial results are not consolidated into the financial statements prepared by CUSTOMER, shall make available to PROVIDER such Participant's annual fiscal year end audited financial statements which shall also be prepared in accordance with GAAP and shall comply with the standards established by GASB or such other regulatory agency charged with the regulation of Participants' financial reporting. Upon request, CUSTOMER or Participant (as applicable) shall provide to PROVIDER or their representatives reasonable access to CUSTOMER or Participant's facilities and records for the purpose of performing any inspection and/or copying of CUSTOMER or Participant's books and/or records related to the Card transactions contemplated under this Agreement.

4. Reserved.

5. Warranties; Exclusion of Consequential Damages; Limitation on Liability

5.1. Disclaimer of Warranties. NOTWITHSTANDING SECTION II, INSTRUCTIONS TO OFFERORS OF THE STATE SOLICITATION RFP NO. 5400007106, SECTION VII, TERMS AND CONDITIONS, FOR SERVICES PROVIDED PURSUANT TO THE CONTRACT, PROVIDER DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO CUSTOMER OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT.

5.2. Exclusion of Consequential Damages. AS BETWEEN PROVIDER AND CUSTOMER, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, THEIR RESPECTIVE AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PROVIDED, HOWEVER, THAT UNDER SOUTH CAROLINA LAW, PROVIDER MAY BE LIABLE FOR THE COSTS OF CLAIMS THAT ARISE AGAINST CUSTOMER AS A RESULT OF PROVIDER'S NEGLIGENCE.

5.3. Reserved.

6. Independent Contractor; Third Party Beneficiaries. The parties are independent contractors. Neither party shall have any authority to bind the other. This MSA and any Addenda is entered into solely for the benefit of PROVIDER and CUSTOMER and will not confer any rights upon any person not expressly a party to this MSA and any Addenda, including consumers. Subject to other provisions of the Contract, PROVIDER may subcontract with others to provide Services.

7. **Publicity.** Neither party will initiate publicity relating to this MSA and any Addenda without the prior written approval of the other, except that either party may make disclosures required by legal, accounting or regulatory requirements.

8. **Confidentiality.** Each party acknowledges and agrees that the other may be providing to it and that it may become aware of the confidential and proprietary information of the other party, including but not limited to, the terms of this MSA, any Addenda attached hereto, financial information and other information related to each party's business operations. Each party agrees that it will maintain the confidentiality of such information and neither party shall disclose any such information to any other person or entity (other than to those of its employees, agents, contractors and Affiliates to whom disclosure is reasonably necessary in furtherance of the performance of this MSA). Notwithstanding the foregoing, the requirements of non-disclosure shall not apply to any information which: (a) at the time of disclosure is already in the possession of the receiving party; (b) is independently developed by the receiving party without reliance on the disclosed confidential or proprietary information; (c) is or becomes publicly available through no wrongdoing of the receiving party or (d) becomes available to receiving party on a non-confidential basis from a person, other than the disclosing party, who is not bound by a confidentiality obligation or otherwise restricted from transmitting the information to the receiving party. Furthermore, this Section shall not prohibit the receiving party from making legally required disclosures pursuant to subpoena, court order or the order of any other authority having jurisdiction; provided that receiving party shall provide disclosing party with prompt notice, unless prohibited by law or court order, thereof so that disclosing party may seek an appropriate protective order or other remedy. If in the absence of a protective order or other remedy or waiver of the terms of this section, receiving party determines in its sole discretion that it is required by law, regulation, legal process or regulatory authority to disclose any such confidential or proprietary information, receiving party may disclose such information upon written notice to disclosing party.

9. **Reserved.**

10. **Compliance with Laws.** In performing its obligations under this MSA and any Addenda, each party agrees to comply with all laws and regulations applicable to it. CUSTOMER further agrees to cooperate and provide information requested by PROVIDER, as PROVIDER determines necessary, to facilitate PROVIDER's compliance with any applicable law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury. CUSTOMER further acknowledges and agrees that it will not use its merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time, or those that prohibit processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control (OFAC).

11. **Assignment.**

11.1. Any transfer or assignment of this Agreement by CUSTOMER, by operation of law or otherwise, is voidable by PROVIDER without PROVIDER'S prior written consent.

11.2. PROVIDER may not assign this Contract or its obligations hereunder except as permitted by South Carolina Laws and this Paragraph. Except as prohibited by law, PROVIDER shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger that may reasonably affect this Agreement. An assignment by PROVIDER to a wholly owned or majority controlled Affiliate shall be permitted under the terms of this Agreement, provided that such assignee is capable and willing to provide the same services to CUSTOMER under the same terms and conditions as agreed upon herein. CUSTOMER'S consent to an assignment by PROVIDER as the result of a merger in which the applicable PROVIDER is the surviving corporation shall not be unreasonably withheld upon receipt of reasonable notice thereof, provided that any assignee shall affirm this Agreement according to the terms and conditions of this Agreement. In the event such consent is not given, CUSTOMER or PROVIDER may terminate this Agreement, upon thirty (30) days notice. Notwithstanding the foregoing, upon notice to CUSTOMER, another VISA and MasterCard member may be substituted for PROVIDER under whose sponsorship this Agreement is performed. Upon substitution, such other VISA and MasterCard member shall be responsible for all obligations required of PROVIDER, including without limitation, full responsibility for performance of the terms and conditions herein and such other obligations as may be expressly required by applicable Association Rules.

11.3. This Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, or other person charged with taking custody of a party's assets or business, shall have any right to continue, assume or assign this Agreement.

12. **Reserved.**

13. **Waiver of Jury Trial.** ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS MSA AND ANY ADDENDA.

14. **Force Majeure.** Neither party shall be held responsible for any delays in or failure or suspension of service caused, directly or indirectly, by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), failure, delay or error in clearing or processing a transaction through the ACH Network or Federal Reserve system, if applicable, the nonperformance, delay or error by a third party or in any other third party system for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications, transmission links or other equipment; any outbreak or escalation of hostilities, war, riots, terrorism or civil disorders in any country; strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, earthquake, fire, flood, elements of nature or other acts of God, any act or omission of the other party or any government authority, or other causes reasonably beyond the control of such party. In any such event, the non-performing party shall be excused from any further

performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.

15. Equipment. CUSTOMER acknowledges that equipment and/or software purchased or rented from PROVIDER, if any, may not be compatible with another processor's systems. PROVIDER does not have any obligation to make such software and/or equipment compatible with any other processing systems. In the event that CUSTOMER elects to use another processing service provider upon the termination of this MSA or any Addenda, CUSTOMER acknowledges that it may not be able to use the equipment and/or software rented or purchased under this MSA or any Addenda.

16. Notices. Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Services) shall be in writing, shall be sent by mail, courier or facsimile (facsimile notices shall be confirmed in writing facsimile confirmation), if to CUSTOMER at the address appearing on the Participating Agreement and if to PROVIDER at the following address: First Data Merchant Services Corporation, 1307 Walt Whitman Road, Melville, New York 11747, Facsimile (631) 683-7516, Attention: Executive Vice President Operations, with a copy to Attention: General Counsel's Office, 6200 S. Quebec St., Suite 260-A, Greenwood Village, Colorado 80111, and shall be deemed to have been given (i) if sent by mail or courier, when received, and (ii) if sent by facsimile machine, when the confirmation copy is actually received. Notice given in any other manner shall be effective when delivered.

17. Headings. The headings contained in this MSA and any Addenda are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this MSA and any Addenda.

18. Severability. The parties intend every provision of this MSA and any Addenda to be severable. If any part of this MSA and any Addenda are not enforceable, the remaining provisions shall remain valid and enforceable. In such case, the parties will in good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.

19. Changes. This MSA, along with any Addenda can be changed only in accordance with the Contract. The words "including", "include" and "includes" will each be deemed to be followed by the term "without limitation". This MSA and any Addenda may be executed in counterparts, each of which will be deemed an original for all purposes, but all of which when taken together will constitute one agreement. Section headings are for convenience only and will not affect this MSA and any Addenda's meaning.

The parties hereto have caused this MSA and any Addenda to be executed by their duly authorized officers. **THIS MSA AND ANY ADDENDA IS NOT BINDING UPON PROVIDER UNTIL SIGNED BY PROVIDER.**

("CUSTOMER")

SUNTRUST MERCHANT SERVICES, LLC
("PROVIDER")

By: _____

By: _____

Name: _____
(Please Print or Type)

Name: _____
(Please Print or Type)

Title: _____

Title: _____

Date: _____

Date: _____